



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0179; FRL-9910-04-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of Volatile Organic Compound Emissions from Mondelēz Global LLC, Inc. - Richmond Bakery located in Henrico County, Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP). The revisions consist of a Federally enforceable state operating permit containing terms and conditions for the control of volatile organic compound (VOC) emissions from the Mondelēz Global LLC, Inc. (Mondelēz) – Richmond Bakery located in Henrico County, Virginia. EPA is approving these revisions for the purpose of meeting the requirements for reasonably available control technology (RACT) in order to implement the maintenance plan for the Richmond 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) maintenance area in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0179 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. Mail: EPA-R03-OAR-2014-0179, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0179. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 14, 2014, the Commonwealth of Virginia submitted a formal revision to its SIP.

The SIP revision consists of a Federally enforceable state operating permit containing terms and conditions for the control of VOC emissions from the Mondelēz – Richmond Bakery located in Henrico County, Virginia. The submittal is for the purpose of meeting the requirements for

RACT in order to implement the maintenance plan for the Richmond 1997 8-hour ozone NAAQS maintenance area.

RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available with the consideration of technological and economic feasibility. The VOC RACT regulations that apply to source categories of VOCs are generally those VOC RACT regulations adopted by a state based upon Control Technique Guideline (CTG) documents issued by EPA. Major sources of VOCs that are subject to RACT, but that are not covered by a regulation adopted by a state pursuant to a CTG are referred to as non-CTG VOC RACT sources. When the Richmond area was originally designated as an ozone nonattainment area under the 1-hour standard, it was classified as moderate and thereby had to meet the non-CTG RACT requirements of section 182 of the CAA. As part of the 1-hour ozone attainment plan, one of the sources located in the area identified as being subject to non-CTG RACT was Kraft Foods (now Mondelēz). Cookies and crackers are produced at this plant. The sources of VOC emissions at this plant are ovens for baking the dough, and oil treatment facilities.

The Mondelēz bakery located in Henrico County, Virginia underwent RACT analysis, and a Federally enforceable state operating permit was issued to the facility, which became effective on April 24, 1991. The permit was then submitted to EPA as a SIP revision, and approved into the Commonwealth's SIP on March 6, 1992 (57 FR 8080).

On September 22, 2004, under the 1997 8-hour ozone standard, the Richmond area was

classified as a marginal nonattainment area. On September 20, 2006, the Virginia Department of Environmental Quality (VADEQ) formally submitted a request to redesignate the Richmond area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. On September 25, 2006, the VADEQ submitted a maintenance plan for the Richmond area as a SIP revision to ensure continued attainment. The redesignation request and maintenance plan were approved on June 1, 2007 (72 FR 30485). Section 107(d)(3)(E) of the CAA stipulates that for an area to be redesignated, EPA must approve a maintenance plan that meets the requirements of section 175A. All applicable nonattainment area requirements remain in place. The plan includes a demonstration that emissions will remain within the 2005 levels for a 10-year period by keeping in place key elements of the current Federal and state regulatory programs, including case-by-case RACT requirements for the area. Because the Richmond area in which this facility is located has continuously been classified as either a nonattainment or a maintenance area, the RACT requirements remain in effect.

II. Summary of SIP Revision

In 2012, Mondelēz made modifications to its process that necessitated revisions to its RACT permit. The most notable change is in the ownership of the company which changed from Kraft Food Global Inc. to Mondelēz Global LLC, Inc. The revised permit consists of 20 conditions and changes that were made throughout the permit. They include the following changes: Mondelēz needed to update the aging VOC emission control equipment for Oven 1 from a catalytic thermal oxidizer (CTO) to a regenerative thermal oxidizer (RTO) which maintains the same VOC emissions control efficiency of 95 percent (%); propane is no longer listed as a fuel option and instead natural gas is the only fuel option available for Ovens 1

through 9; and references to sponge dough and straight dough were changed to yeast dough and non-yeast dough respectively. Also, the criteria for the permanent total enclosure (PTE) are now in the permit. Previously, the PTE provisions were found in the appendix. Additionally, certain conditions and regulatory references have been removed because they are either no longer applicable or for purposes of providing clarity to the permit. None of these revisions result in any changes in operations or emissions increases of VOCs. A more detailed description of the state submittal and EPA's evaluation can be found in the Technical Support Document (TSD) with Docket ID No. EPA-R03-OAR-2014-0179 prepared in support of this rulemaking action.

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to

documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.” Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving revisions to the Commonwealth of Virginia's SIP that consist of a revised Federally enforceable state operating permit containing terms and conditions for the control of VOC emissions from the Mondelēz Global LLC, Inc.– Richmond Bakery located in Henrico County, Virginia. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of

non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This rulemaking action approving Virginia's SIP revision consisting of a Federally enforceable State operating permit containing terms and conditions for the control of VOC from the Mondelēz Global LLC, Inc. – Richmond Bakery located in Henrico County, Virginia may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 11, 2014

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV--Virginia

2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Kraft Foods Global, Inc.—Richmond Bakery and adding an entry for Mondelēz Global LLC, Inc. – Richmond Bakery at the end of the table. The added text reads as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-Approved Source Specific Requirements

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* * * * *				
Mondelēz Global LLC, Inc. – Richmond Bakery	Registration No. 50703	2/14/14	[Insert Federal Register publication date] [Insert page number where the document begins]	52.2420(d)(13)

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[FR Doc. 2014-09658 Filed 04/28/2014 at 8:45 am; Publication Date: 04/29/2014]